



U.S. Department of Justice

DTB:ACT  
90-11-3-215

|        |            |
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| Site:  | Lee's Lane |
| Break: | 10.1       |
| Other: | Conf.      |

Washington, D.C. 20530

October 3, 1990

By overnight mail

Charles F. Merz, Esq.  
Pedley, Ross, Zielke & Gordinier  
450 South Third Street  
Fifth Floor  
Louisville, Kentucky 40202

Re: Lee's Lane Superfund Site

Dear Chuck:

As we discussed yesterday, we have reviewed MSD's comments on EPA's proposed Appendix I to the administrative order on consent, and it appears that the first step in reaching an agreement is to resolve the issue of how to distinguish between routine operation and maintenance and major capital expenditures in the nature of remedy failure. As I mentioned yesterday, and as we have recognized all along, we do not expect MSD to assume the latter obligations in this agreement. I think we have both consistently recognized that we would need to arrive at a mutually agreeable approach for reducing this concept into a written agreement. I understand that your proposal to place a quarterly cap on expenditures for certain specified maintenance activities is an effort to address this concern. As I explained, however, because of the manner in which EPA carries out its response activities, and the potential variability in responsibilities from quarter to quarter, this particular proposal is unworkable. However, we suggest a variation on MSD's proposal.

Under this approach, and as you proposed, MSD would conduct all sampling and analysis activities and certain specified maintenance activities for the full thirty-year period. In addition, MSD would conduct those maintenance activities which you had proposed be subject to a quarterly cap until an overall monetary cap was reached. When this cap is reached, MSD's obligations with respect to those specified maintenance activities would terminate, even if this occurred at some point before the expiration of the thirty-year period. In any event, MSD's obligations would terminate upon expiration of the thirty-year period, even if the full amount of the cap had not been expended. The cap would simply set an outer limit on MSD's obligations with respect to these maintenance activities within the thirty-year O & M period. We believe that this approach would provide MSD with the requisite degree of certainty and



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provide EPA with a workable agreement. We suggest that the cap be set in the \$200,000 to \$300,000 range.

Please let me know your thoughts with respect to this approach. If we can reach an agreement on resolving this particular concern, we can turn our attention to working out appropriate language and addressing MSD's other specific comments. As I mentioned, I believe that the latter task will be relatively straightforward.

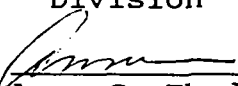
As we discussed, in light of our projected date for filing the complaint, it will be necessary for MSD to sign a tolling agreement in order for us to continue settlement discussions without naming MSD as a defendant in the district court litigation. Thus, I have enclosed a proposed agreement. Please let me know right away if you have any problems with the wording, and I will make any appropriate revisions. Otherwise, please have MSD sign the agreement and return it to me by October 10.

I look forward to talking with you soon.

Sincerely,

Richard B. Stewart  
Assistant Attorney General  
Environment & Natural Resources  
Division

By:

  
\_\_\_\_\_  
Anna C. Thode  
Trial Attorney  
Environmental Enforcement Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1197

Enclosure

cc: Robert Caplan, Esq.  
Derek Matory

AGREEMENT

In the interests of resolving the United States' claim against the Louisville and Jefferson County Metropolitan Sewer District ("MSD") regarding the Lee's Lane Landfill Superfund Site under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), without litigation, and in consideration of the United States' forbearance from filing a complaint pending the conclusion of settlement discussions, MSD agrees not to plead, assert, or raise in any manner a defense or defenses to the United States' claim based on the statute of limitations or laches. Nothing herein shall be construed as an admission by the United States that a defense based on the statute of limitations or laches has any basis in law or fact, nor shall anything herein be construed as an admission of liability by MSD.

I hereby certify that I am fully authorized by the Louisville and Jefferson County Metropolitan Sewer District to enter into this Agreement on its behalf.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_